

BakerHostetler

Baker&Hostetler LLP

45 Rockefeller Plaza
New York, NY 10111

T 212.589.4200
F 212.589.4201
www.bakerlaw.com

December 11, 2015

Nicholas J. Cremona
Direct dial: 212.589.4682
ncremona@bakerlaw.com

VIA ECF AND ELECTRONIC MAIL

Honorable Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Room 723
New York, New York 10004-1408
Bernstein.chambers@nysb.uscourts.gov

Re: Adv. Pro. No. 10-04918 (SMB); *Irving H. Picard v. Ellen Bernfeld*
Adv. Pro. No. 10-05143 (SMB); *Irving H. Picard v. Marilyn Bernfeld Trust*
Adv. Pro. No. 10-04841 (SMB); *Irving H. Picard v. Michael A. Bellini and Judith Bellini*

Dear Judge Bernstein:

We are counsel to Irving H. Picard, as trustee (“Trustee”) for the substantively consolidated SIPA liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 7848aaa, *et seq.* and the estate of Bernard L. Madoff. We write to request a conference with the Court, pursuant to Local Bankruptcy Rule 7007-1(b) and your Honor’s Chambers Rules, with respect to the failure of defendants in the three above-referenced proceedings to comply with this Court’s orders issued on November 3, 2015 directing Defendants to serve discovery responses by December 1, 2015 (collectively the “Discovery Orders”, Dkt. No. 17 in Adv. Pro. No. 10-04918, Dkt. No. 19 in Adv. Pro. No. 10-05143, and Dkt. No. 24 in Adv. Pro. No. 10-04841). True and correct copies of the Discovery Orders are attached hereto as Exhibit A.

On July 6, 2015, the Trustee served Requests for Admission, Interrogatories, and Requests for Production in Adv. Pro. No. 10-04918. On July 14, the Trustee served Requests for Admission, Interrogatories, and Requests for Production in Adv. Pro. Nos. 10-05143 and 10-04841. Defendants did not respond to the Trustee’s discovery.

Honorable Stuart M. Bernstein
December 11, 2015
Page 2

On October 28, 2015, the Court held a hearing and granted the Trustee's request for entry of an order that the Trustee's Requests for Admission were deemed admitted pursuant to Federal Rule of Civil Procedure 36(a)(3) and that Defendants respond to the Trustee's First Set of Interrogatories and First Set of Requests for Production of Documents by December 1, 2015.

After receiving no discovery responses on December 1, counsel for the Trustee emailed counsel for Defendants on December 2 to inquire if the responses had been sent. Counsel for Defendants responded that he had calendared the date for December 31 and asked counsel for the Trustee to send a copy of the Discovery Orders, which were sent the same day. Counsel for the Trustee wrote counsel for Defendants again on December 7, but as of the date of this correspondence, Defendants have not responded to any of the Trustee's discovery requests.

Based on the foregoing, and pursuant to Local Bankruptcy Rule 7007-1(b), the Trustee respectfully requests a conference with the Court to request permission to bring a motion under Fed. R. Civ. P. 37(b)(2)(A), as incorporated by Bankruptcy Rule 7037, for an order (1) directing that the facts and allegations pled in the Trustee's Original Complaint are established for purposes of these three proceedings, (2) striking Defendants' Answers, (3) rendering a default judgment against Defendants, and (4) treating as contempt of court the failure to obey the Discovery Orders. In addition, the Trustee intends to seek an order requiring counsel for Defendants to pay the reasonable expenses, including attorneys' fees, caused by Defendants' failure to comply with the Discovery Orders.

Respectfully submitted,

/s/ Nicholas J. Cremona
Nicholas J. Cremona

Enclosures

cc: Timothy Wedeen
Wedeen & Kavanaugh
19 Phelps Avenue, 3rd Floor
Tenafly, NJ 07670
timothy.wedeen@gmail.com